

Internal Revenue Service

Number: **201312028**

Release Date: 3/22/2013

Index Number: 301.00-00, 305.00-00,
305.03-00

Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:CORP:B05

PLR-149448-12

Date:

December 20, 2012

Legend

Taxpayer =

State A =

Exchange =

Date 1 =

Date 2 =

Dear :

This letter responds to a November 15, 2012 letter requesting rulings under §§ 301 and 305 of the Internal Revenue Code of 1986, as amended (the "Code"). The information received in that request is summarized below.

SUMMARY OF FACTS

Taxpayer, a State A corporation, is an accrual basis taxpayer that files federal income tax returns as a real estate investment trust ("REIT") on a calendar-year basis.

Taxpayer, for all relevant periods, qualifies as a REIT and intends to maintain such qualification. Taxpayer regularly distributes its earnings and profits as required under § 857(a)(1). Taxpayer has one class of common stock outstanding (the "Common Stock"), which is publicly traded and listed on the Exchange.

Taxpayer intends to make one or more distributions with respect to its Common Stock for the taxable years ending on Date 1 and Date 2 (the "Proposed Distributions"). Taxpayer will make the Proposed Distributions in the form of a combination of Common Stock and cash. Each shareholder will have the right to elect to receive its portion of a Proposed Distribution in the form of either 100 percent Common Stock or 100 percent cash. If a shareholder fails to make a valid election, that shareholder will be deemed to have made an election to receive its portion of the Proposed Distribution in the form of 100 percent Common Stock.

While each shareholder will have the option to elect to receive cash in lieu of Common Stock for its portion of a Proposed Distribution, Taxpayer will limit the aggregate amount of cash to be distributed in a Proposed Distribution to an amount not less than 20 percent of the total value of the Proposed Distribution (the "Cash Limit"). In no event will the total amount of cash available in a Proposed Distribution be less than the Cash Limit. Any cash paid in lieu of fractional shares of Common Stock will not count towards the Cash Limit.

If, for any Proposed Distribution, the total number of shares of Common Stock for which an election to receive cash is made would result in the payment of cash in an aggregate amount that is less than or equal to the Cash Limit, then each shareholder electing to receive cash will receive its portion of the Proposed Distribution entirely in cash. If the total number of shares of Common Stock for which an election to receive cash is made would result in the payment of cash in an aggregate amount that is in excess of the Cash Limit, then each shareholder electing to receive cash will receive a prorated amount of cash and will receive the remainder of its portion of the Proposed Distribution in Common Stock. In no event will a shareholder electing to receive cash receive less than 20 percent of its portion of the Proposed Distribution in cash.

The total number of shares of Common Stock to be received by any shareholder in a Proposed Distribution will be determined, over a period of up to two weeks ending as close as practicable to the payment date, based upon a formula using market prices and designed to equate the value of the number of shares to be received with the amount of cash that could be received instead.

The Taxpayer has outstanding a class of preferred stock which is convertible into Common Stock at the option of the holder ("Convertible Preferred Stock"). In connection with each of the Proposed Distributions, the conversion ratio applicable to the Convertible Preferred Stock may be increased (the "Adjustments"), which will entitle the holders of the Convertible Preferred Stock to receive upon conversion a greater number of shares of Common Stock than they would otherwise be entitled to receive if the Adjustments were not made. Accordingly, the Adjustments will entitle the holders of the Convertible Preferred Stock to possess, upon conversion, a greater proportionate interest in the assets or earnings and profits of the Taxpayer than they would possess if

the Adjustments were not made, provided cash is distributed in the related Proposed Distribution.

Taxpayer does not currently have a dividend reinvestment plan ("DRIP") in effect, but for any shareholder participating in a future DRIP, the DRIP will apply only to the extent of the cash which the shareholder would have received in the Proposed Distribution in the absence of the DRIP.

RULINGS

- 1) The Common Stock and cash distributed in a Proposed Distribution by the Taxpayer will be treated as a distribution of cash and property with respect to its stock to which section 301 applies. §§ 301, 305(b)(1). The amount of the distribution of Common Stock will be considered equal to the amount of cash which could have been received instead by such shareholder. Treas. Reg. §§ 1.305-1(b)(2), 1.305-2(b), Ex. 2
- 2) Provided that cash is distributed in a Proposed Distribution using the cash/stock distribution election as described above, then the Adjustments made in connection with that Proposed Distribution to the Convertible Preferred Stock shall constitute a deemed distribution of Common Stock to the holders of the Convertible Preferred Stock to which § 301 applies by reason of §§ 305(b)(2) and (c). Rev. Rul. 75-513, 1975-2 C.B. 114. The amount of the deemed distribution of stock shall be measured by the fair market value, as of the date of the Adjustments, of the number of shares of Common Stock deemed distributed to the holders of the Convertible Preferred Stock. Treas. Reg. §§ 1.305-1(b)(3), 1.305-3(e), Ex. 6, 8, 9, 15; Rev. Rul. 75-513.

CAVEATS

Except as expressly provided herein, no opinion is expressed or implied concerning the tax treatment of the proposed transaction under other provisions of the Code and regulations or the tax treatment of any condition existing at the time of or effects resulting from the Proposed Distributions which are not specifically covered by the above rulings. In particular, no opinion is expressed with regard to whether Taxpayer qualifies as a REIT under subchapter M of the Code or whether the distributions made pursuant to the ruling will satisfy the "required distribution" requirement under § 4981(b)(1). Furthermore, no opinion is expressed with regard to whether the Proposed Distribution constitutes a preferential dividend under § 562(c).

PROCEDURAL STATEMENTS

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely,

Lisa A. Fuller

Lisa A. Fuller
Branch Chief, Branch 5
Office of Associate Chief Counsel
(Corporate)

cc: